

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Terrill Smith,

Movant,

v.

United States of America,

Respondent.

No. CV-21-01928-PHX-SPL
No. CR-16-00734-PHX-SPL

ORDER

At issue is the Report and Recommendation (Doc. 12) (“R&R”) entered in this matter by the Magistrate Judge. The Magistrate Judge has recommended that the Motion of Mr. Smith be denied and dismissed with prejudice, in both matters.

The Court has before it, Movant’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 1), Response to Movant’s Motion from the Respondent (Doc. 6) and the Movant’s Reply. (Doc. 11) Additionally, the Court is in receipt of the Report and Recommendation of the Magistrate Judge (Doc. 12), Movant’s Objections (Doc. 19) and the Response to the Movant’s Objections from the Respondent (Doc. 20).

A district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). When a party files a timely objection to an R&R, the district judge reviews *de novo* those portions of the R&R that have been “properly objected to.” Fed. R. Civ. P. 72(b). A proper objection requires specific written objections to the findings and recommendations in the R&R. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); 28 U.S.C. § 636(b) (1). It

1 follows that the Court need not conduct any review of portions to which no specific
2 objection has been made. *See Reyna-Tapia*, 328 F.3d at 1121; *see also Thomas v. Arn*, 474
3 U.S. 140, 149 (1985) (discussing the inherent purpose of limited review is judicial
4 economy). Further, a party is not entitled as of right to *de novo* review of evidence or
5 arguments which are raised for the first time in an objection to the R&R, and the Court's
6 decision to consider them is discretionary. *United States v. Howell*, 231 F.3d 615, 621-622
7 (9th Cir. 2000).

8 The Court has carefully undertaken an extensive review of the sufficiently
9 developed record. The Movant's objections to the findings and recommendations have
10 been thoroughly considered.

11 After conducting a *de novo* review of the issues and objections, the Court reaches
12 the same conclusions reached by the Magistrate Judge. This Court finds Judge Boyle has
13 correctly concluded that trial counsel was not ineffective in the representation of the
14 Movant. Furthermore, the Court also finds cumulative error or prejudice has not been
15 shown. The R&R will be adopted in full. Accordingly,

16 **IT IS ORDERED:**

17 1. That the Magistrate Judge's Report and Recommendation (Doc. 12) is
18 **accepted** and **adopted** by the Court.

19 2. That the Movant's Objections (Doc. 19) are **overruled**.

20 3. That the Motion to Vacate, Set Aside, or Correct the Sentence pursuant to 28
21 U.S.C. § 2255 (Doc. 1) 21-CV- 01928 and related matter 16-CR-00734 are **denied** and
22 **dismissed with prejudice**.

23 4. That a Certificate of Appealability and leave to proceed *in forma pauperis*
24 on appeal are **denied** finding that Mr. Arthur has not made a substantial showing of the
25 denial of a Constitutional right; and

26 ///

27 ///

28 ///

